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 Chair, Tax Decision Distribution Committee

**IN THE SUPREME COURT
 STATE OF ARIZONA**

In the Matter of:)	
)	
Arizona Rules of)	
Civil Appellate Procedure)	Supreme Court No. _____
)	
and)	PETITION FOR ADOPTION OF RULE 28.1,
)	ARIZONA RULES OF CIVIL APPELLATE
Arizona Tax Court Rules)	PROCEDURE; PETITION FOR ADOPTION
of Practice)	OF RULE 15.1, ARIZONA TAX COURT
)	RULES OF PRACTICE
_____)	

PETITION FOR ADOPTION OF RULE 28.1, ARIZONA RULES OF CIVIL APPELLATE PROCEDURE; PETITION FOR ADOPTION OF RULE 15.1, ARIZONA TAX COURT RULES OF PRACTICE

Pursuant to Rule 28, Rules of the Supreme Court, the Tax Decision Distribution Committee, by and through its chair, Judge Patrick Irvine of the Arizona Court of Appeals, Division One, petitions the Court to adopt Rule 28.1, *Arizona Rules of Civil Appellate Procedure (ARCAP)*, as reflected in the accompanying Appendix A. The Committee also petitions the Court to adopt Rule

15.1, *Arizona Tax Court Rules of Practice (ATCRP)*, as reflected in the accompanying Appendix B.

I. INTRODUCTION

In 2006, the Legislature enacted A.R.S. § 42-2077, dealing with distribution of administrative and judicial tax decisions. A.R.S. § 42-2077(D) provided for the Supreme Court to adopt rules to establish a procedure to distribute tax memorandum decisions to the general public and determine what memorandum decisions are appropriate for distribution.

In response to the enactment of A.R.S. § 42-2077, the Supreme Court established the Tax Decision Distribution Committee by Administrative Order No. 2006-67, to examine distribution of tax decisions and to make any recommendations of proposed revisions to the current rules to the Arizona Judicial Council. The Committee met on September 21, 2006. After discussion, the chair appointed a workgroup to prepare drafts of proposed revisions to the Arizona Rules of Civil Appellate Procedure and the Arizona Tax Court Rules of Practice to address the distribution of unpublished tax decisions.

The workgroup presented its proposals to the full Committee at a meeting held on October 19, 2006. The committee discussed the draft rules and reached consensus on proposed Rule 28.1, ARCAP, attached in Appendix A, and proposed Rule 15.1 Arizona Tax Court Rules of Practice, attached in Appendix B.

II. SUMMARY OF THE PROPOSED RULES

Rule 28.1, Arizona Rules of Civil Appellate Procedure

This proposed rule provides for the distribution of Tax Memorandum Decisions by posting the Decision on the issuing appellate court's website within thirty days from the date of issuance. The requirement to post Tax Memorandum Decisions applies to Divisions One and Two of the Court of Appeals and the Supreme Court. The court will distribute those Tax Memorandum Decisions that, in its discretion, determine significant substantive or procedural issues.

A Tax Memorandum Decision is a memorandum decision, as defined in Rule 28, ARCAP, involving the imposition, assessment or collection of a tax, including all questions of law and fact relating to disputes about taxes, or the providing of tax decisions. Being an unpublished decision, a Tax Memorandum Decision posted on the Court's website is not binding as legal precedent and cannot be cited except as otherwise prescribed under Rule 28, ARCAP.

Rule 15.1, Arizona Tax Court Rules of Practice

This rule provides for the distribution of unpublished decisions of the Arizona Tax Court. The Tax Court, in its sole discretion, determines whether the decision involves substantive or significant issues of legal interpretation or procedure. Tax Decisions issued by other divisions of the Maricopa County Superior Court, by the Superior Court in other counties, or by superior court

commissioners in small claims tax cases, may also be posted by the Tax Court to its website if either party or the judge or commissioner issuing the decision requests such posting and the Tax Court, in its sole discretion, determines that the decision meets the criteria for distribution. The decision to post or not to post any decision is not an endorsement or rejection by the Tax Court of any such decision.

Unpublished tax decisions posted on the Tax Court's website are not binding authority and are not legal precedent.

III. CONCLUSION

Petitioner respectfully requests that the Supreme Court consider this petition and proposed rules at its earliest convenience. Petitioner additionally requests that the petition be circulated for public comment until May 20, 2007 and that the court adopt the proposed rules as they currently appear or as modified in light of comments received from the public, with an effective date of January 1, 2008.

Adoption of the proposed rules will ensure that tax decisions of the Arizona Tax Court, other superior courts, superior court commissioners and memorandum decisions of the Arizona Court of Appeals are distributed in a manner that is coordinated with and complementary to the distribution of administrative tax decisions as required by A.R.S. § 42-2077.

DATED this 1st day of November, 2006.

Judge Patrick Irvine
Arizona Court of Appeals, Division One

Original and 6 copies filed with
The Clerk of the Arizona
Supreme Court.

Copy mailed or hand-delivered this 1st day of
November, 2006, to:

Chief Justice Ruth V. McGregor
Vice Chief Justice Rebecca White Berch
Justice Michael D. Ryan
Justice Andrew D. Hurwitz
Justice W. Scott Bales
David K. Byers, Administrative Director
Patience Huntwork, Chief Staff Attorney

APPENDIX A

(Proposed New Rule 28.1, Arizona Rules of Civil Appellate Procedure)

Rule 28.1. Availability of Tax Memorandum Decisions.

(a) Tax Memorandum Decision. Tax Memorandum Decision, as defined in these rules, shall mean any memorandum decision as defined in Rule 28 of these rules that is a disposition of an appeal or a portion thereof that involves the imposition, assessment or collection of a tax, including all questions of law and fact relating to disputes about taxes, or the providing of tax decisions, and includes:

1. Actions arising under Arizona Revised Statutes, title 5, chapters 1, 2, 3 or 4, title 23, chapters 4 or 6 or title 20, 28, 42, 43 or 48,
2. Disputes between political subdivisions of this state regarding taxes, and
3. Appeals involving taxes imposed, assessed or collected by local jurisdictions.

(b) Availability. Within thirty days from the date of issuance, all Tax Memorandum Decisions issued by any Court that contain, in the discretion of the Court, substantive or significant procedural issues, shall be posted on the respective Court of Appeals or Supreme Court website in a manner that prominently indicates that the Tax Memorandum Decisions are not binding legal precedent and cannot be cited except as prescribed under Rule 28 of these rules.

(c) Length of Availability. Tax Memorandum Decisions shall remain posted on the respective Court website for three years from the date of issuance unless, in the sole discretion of the Court, a different length of time is appropriate.

Committee Comment

The addition of this new rule to address Tax Memorandum Decisions is intended to comply with A.R.S. § 42-2077(D). It is intended that Tax Memorandum Decisions, as defined in the amendment, include special actions, accelerated appeals, superior court decisions not issued by the Tax Court, direct appeals to the Court of Appeals, transferred appeals, certified questions from other courts and any other type of tax decision, notwithstanding the procedural methods of appeal. It is intended that the requirement to post Tax Memorandum Decisions on the respective Court websites applies to Divisions One and Two of the Court of Appeals and the Supreme Court. Unlike other provisions of A.R.S. § 42-2077, the rule is not intended to require the Courts to provide copies of Tax Memorandum Decisions to any law libraries or the state library.

APPENDIX B

(Proposed New Rule 15.1, Arizona Tax Court Rules of Practice)

Rule 15.1. Distribution of Tax Decisions

- (a) The Tax Court shall post on its website those of its unpublished decisions which, in its sole discretion, it determines to involve substantive or significant issues of legal interpretation or procedure.
- (b) The Tax Court may, upon the request of either party or the judge or commissioner and at its sole discretion, post on its website an unpublished tax decision from any superior court of this state, including decisions arising under the Tax Court small claims procedure, A.R.S. § 12-172. The decision to post or not to post any decision under this subsection shall not be construed as endorsement or rejection by the Tax Court of such decision.
- (c) Unpublished decisions on the Tax Court website shall be posted in a manner that prominently indicates that they are not binding authority and are not legal precedent.
- (d) Unpublished decisions shall remain posted on the Tax Court website for three years from the date of issuance, unless the Tax Court in its sole discretion determines that a different length of time is appropriate.

Committee Comment

The addition of this new rule is intended to comply with A.R.S. § 42-2077(D). The committee does not read A.R.S. § 42-2077 to require, and this rule is not intended to require, the Tax Court to provide copies of any unpublished decisions posted pursuant to this rule to the state library or any law libraries. It is intended that unpublished decisions, as referred to in this rule include superior court tax decisions not issued by the Tax Court, Tax Court small claim cases and any other type of tax decision, including those written by a superior court